IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2006

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

A.S.NO.740/1991

Durai @ Adhisesha Sayanan .. Appellant/Defendant.

-vs-

Guna @ Girakalakshmi .. Respondent/Plaintiff.

This appeal is filed under Section 19 of the Family Courts Act. praying for the relief as stated therein.

For appellant : : Mr.J.Ramakrishnan

For respondent: : Mr.P.Gopalan

JUDGMENT

This appeal has been preferred against the decree and Judgment dated 4.3.1991in O.S.No.28 of 1990 on the file of the Family Court, Pondicherry.

2. The short facts in the plaint relevant for the purpose of deciding this appeal are as follows:
The plaintiff got married the defendant on 23.4.1986 in accordance with the Hindu Customs. At the time of her marriage,the plaintiff's parents presented her jewels ,household articles as described in the plaint schedule as Sridhana properties. The plaintiff lived with the defendant only for two years from the date of marriage. Subsequently, the plaintiff was ill treated by the defendant and treated her cruelly and demanded her to bring more Sridhana properties on that ground he drove her away from his house. At that time, he retained all the jewels and other Sridhana properties with him. Subsequently, the defendant married second wife viz., Bakkialakshmi and he is living with her. Therefore, the plaintiff did not take any steps for resumption of conjugal rights. The plaintiff demanded the defendant for the return of her Sridhana properties as described in the schedule to the plaint. The defendant had paid any amount towards the marriage expenses. In spite of repeated demands for the return of Sridhana properties, the defendant has not come forward to return the same. The plaintiff issued a lawyer's notice on 15.2.1989 calling upon the defendant to return the Sridhana properties, but the defendant has refused to receive the same. Hence the suit for return of the Sridhana properties.

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3. The defendant in his written statement would contend that he never ill treated the plaintiff. The marriage between the plaintiff and the defendant is admitted. There was no demand by the defendant for Sridhana

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properties from the parents of the plaintiff. The plaintiff went to see her parents and relatives with a consent of the defendant,but to his surprise, she did not return. Afterwards, in spite of his repeated request, the plaintiff refused to return the matrimonial home. The averments in the plaint that the defendant had married one Bakkialakshmi for the second time is denied as false. The Sridhana propeprties mentioned in the plaint schedule are not in the possession of the defendant. Certain properties described in the schedule of the written statement are with the defendant and he is willing to return the same. The plaintiff did not leave any of her gold jewels and other properties with the defendant. On the other hand, she has taken away gold chain weighing two sovereigns belonging to the defendant. The plaintiff has to return the marriage saree purchased by the defendant at the cost of Rs.2,500/-. Therefore, except the admitted properties, the defendant is not liable to return any other properties mentioned in the plaint schedule property.

4.On the above pleadings, the learned trial Judge had framed three issues and after carefully going through the oral and documentary evidence, has come to a conclusion that the plaintiff is entitled to a decree for return of the Sridhana properties as mentioned in the plaint schedule or their value amounting to Rs.37,776/-. Aggrieved by the findings of the learned trial Judge, the defendant has preferred this appeal.

5. Now the point for determination in this appeal is
" Whether the plaintiff is entitled to get back her Sridhana properties as schedule to the plaint?"

6. The Point:
In the written statement filed by the defendant, he has attached a schedule which contain Item Nos.1,2,3 in the plaint schedule property No I, Item Nos.1,2,7,8,9, and 10 in the plaint schedule property No.II. According to the defendant ,the above said items alone are the Sridhana properties belonging to the plaintiff now with the possession of the defendant and he is willing to return the same to the plaintiff but there are four items in the plaint schedule properties. Particularly, Item No. IV, are gold jewels weighing about ten sovereigns of gold ornaments. According to the plaintiff, she had left all the plaint schedule Items of Sridhana properties with the defendant, when she left the matrimonial home, since the defendant had began to live with another woman by name Bakkialakshmi. On the other hand, the defendant in his evidence as D.W.1 would depose that at the time when the plaintiff left the matrimonial home, she had left only the properties scheduled to the written statement. D.W.2 who is a close relative of the defendant, would depose that the plaintiff had taken away two sovereigns of gold chain belonging to the defendant , one silk saree worth about Rs.2,500/- and five quarter sovereigns of gold coins at the time, when she left the matrimonial home. D.W.3 also corroborates the said evidence of D.W.2. The defendant in his written statement at paragraph 6 has also alleged that the plaintiff had taken away his gold chain weighing two sovereigns and also a silk saree worth about Rs.2500/-. But the defendant has not deposed this fact, while he was examined before the trial Court as D.W.1. What D.W.1 has pleaded, was deposed by D.Ws 2 and 3. If the contentions of the defendant that the plaintiff had taken away gold chain weighing two sovereigns belonging to

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the defendant and silk saree worth about Rs.2,500/-, at the time, when she left the matrimonial home are true, then at least, the defendant would have sent a suit notice demanding the plaintiff to return those articles. But only the plaintiff has come forward with the suit demanding the return of her Sridhana properties scheduled to the plaint including the gold ornaments weighing ten sovereigns.

7. The learned counsel appearing for the appellant relying on the evidence of P.W.3 would contend that the plaintiff has not filed any list containing the Sridhana properties alleged to have been prepared at the time of marriage. But P.W.3 has not stated that in the said list, the defendant has also signed. Under such circumstances, even if the alleged list if produced by the plaintiff, the defendant would not admit the same. On the other hand, about nine items of Sridhana properties as indicated above, were admittedly to be in possession of the defendant. The evidence of P.W.4 is also relevant to be noted in this context. P.W.5 in his evidence has stated that at the time of marriage, vessels, cot, almirah and other articles worth about Rs.5,000/- and about ten sovereigns of jewels were presented to the plaintiff at the time of her marriage and that at the time, when she left the matrimonial home, she did not bring those jewels and articles to her house and that they were left in the house of the defendant. P.W.4 was not cross examined at all by the defendant. P.W.4 is aged about 70 years and there is no necessity or motive for P.W.4 to depose falsehood against the defendant.

8. The learned counsel appearing for the appellant relying on the decision reported in Susheela Ebenezer and others- vs- The Tamil Nadu Industrial Investment Corporation Limited, Pondicherry and others(2003)2 M.L.J.332) and contended that an adverse inference must be drawn against the party which failed to produce the documents in its custody. But the facts in the above case are not similar to the present facts of the case. In that case, the respondent relied on some documents but failed to produce the same at the time of trial. Only under such circumstances, it has been held by a Division Bench of this Court as follows:

> "Having regard to this ratio of the Supreme Court, the learned Additional District Judge was in error in finding fault with respondents 2 and 3 for not establishing their claim that they had retired from the partnership and the same had been accepted by the petitioner though subject to certain conditions. Admission, it is as ancient as hills, is the best form of proof. Having admitted that the petitioner/Corporation had received the intimation regarding the retirement of respondents 2 and 3, and had also granted approval for the reconstitution, subject to certain conditions, it was incumbent on the petitioner/Corporation to have produced necessary materials to show that such and such were the conditions imposed by the petitioner for recognising the retirement of respondents 2 and 3, and that they had not satisfied or complied with those conditions. Having failed to do so, every adverse inference must be drawn against the petitioner/Corporation. The documents had been deliberately kept back by the

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petitioner/Corporation, as other wise, if they were produced, they would be against their case. We have, therefore, to conclude that respondents 2 and 3 had been illegally made liable for the suit claim, after their being released."

But in the case on hand, the plaintiff never relied on any list said to have been prepared in respect of Sridhana properties at the time of marriage. Only P.W.3 would depose that a list in respect of Sridhana properties was prepared at the time of marriage. The plaintiff has listed the Sridhana properties in the schedule to the plaint . Apart from that the plaintiff in the plaint has not mentioned anything about the preparation of any list regarding the Sridhana properties at the time of marriage. Under such circumstances, the above said dictum will not be applicable to the facts of the present case. Under such circumstances, I do not find any reason to interfere with the findings of the learned trial Judge in coming to the conclusion that the plaintiff is entitled to the relief as prayed for in the plaint. The point is answered accordingly.

9. In fine, this appeal lacks merit and hence the same is dismissed with costs. The plaintiff has to pay the court fee due to the Government.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sg

To
1. The Presiding Officer
Family Court, Pondicherry(with records)

2. The District Collector, Pondicherry.

3. The Record Keeper, VR Section, High Court, Madras.

A.S.No.740/91

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